

Appl. No. : 10/085,169  
Filed : February 25, 2002

### REMARKS

In response to the Office Action mailed March 24, 2004, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 1-3, 5-8, 11 and 12 remain pending. Claims 4, 9 and 10 have been canceled, without prejudice or disclaimer. Claims 1 and 5 have been amended.

In the changes made by the current amendment, ~~deletions are shown by strikethrough~~, and additions are underlined.

#### **The Non-Elected Claims Have Been Canceled**

Non-Elected Claims 4, 9 and 10 have been canceled, without prejudice or disclaimer. Applicants expressly reserve the right to pursue the same, or similar claims at a later date.

#### **Claims 1-3 and 5 Are Allowable Over The Applied References**

Claims 1, 2 and 5 presently stand rejected under 35 U.S.C. § 102(b) as anticipated by Lampropoulos et al. Claim 3 presently stands rejected under 35 U.S.C. § 103(a) as unpatentable over Lampropoulos et al. Applicants respectfully submit that the claims, as amended, are patentable over the applied reference and request reconsideration and withdrawal of the present rejections.

Lampropoulos et al. discloses an anesthetizing sheath apparatus that may be detachably or permanently mounted to a catheter. The sheath surrounds a portion of the catheter that is disposed within the subcutaneous tissue of a patient. The sheath includes a plurality of slots that are movable between a closed position and an open position. In the closed position, the slots inhibit bodily fluid from entering a space between the sheath and the catheter. In the open position, an anesthetizing agent introduced into the space between the sheath and the catheter is permitted to pass through the slots and into the subcutaneous tissue to reduce discomfort to the patient when the sheath is removed.

In contrast, Claim 1 recites a catheter including, among other recitations, an elongated tube having a plurality of exit holes in a side wall of the tube. A combined area of the exit holes is fixed and is less than a cross-sectional area of a lumen of the tube.

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As discussed above, the slots of the Lampropoulos et al. reference are variable in size (and variable in collective area) between a closed position and an open position. As argued by the Examiner, in the closed position, the combined area of the slots in Lampropoulos et al. are less than the cross-sectional area of the lumen. However, the Lampropoulos et al. reference does not disclose or suggest a catheter having a fixed collective area of the exit holes that is less than a cross-sectional area of the catheter lumen. Accordingly, Applicants respectfully submit that Claim 1 is allowable over the Lampropoulos et al. reference and request reconsideration and withdrawal of the rejection of Claim 1.

Claims 2 and 3 depend from allowable Claim 1. These claims are allowable not only because they depend from an allowable claim, but upon their own merit as well. Accordingly, reconsideration and withdrawal of the rejection of Claims 2 and 3 is respectfully requested.

Claim 5 recites a method of manufacturing a device for the uniform delivery of fluid including, among other recitations, forming an elongated catheter and providing a plurality of exit holes having a fixed size along the length of the catheter. A combined cross-sectional area of the exit holes is less than a flow area of the lumen. Thus, for at least the reasons as described above with reference to Claim 1, Applicants respectfully submit that Claim 5 is also allowable. Accordingly, reconsideration and withdrawal of the rejection of Claim 5 is respectfully requested.

#### **Claims 6-8, 11 and 12 Are Also Allowable**

The outstanding Office Action indicates that Claims 4 and 9-12 are withdrawn from further consideration. Claims 6-8 were not specifically mentioned in the Office Action. Applicants note that Claims 6-8, 11 and 12 were elected in the Response To Restriction Requirement mailed December 18, 2003. Claims 7 and 8 depend from elected Claim 1. Claims 6, 11 and 12 depend from elected Claim 5. Thus, Applicants respectfully request allowance of Claims 6-8, 11 and 12. These claims are allowable, not only because they depend from an allowable claim, but upon their own merit as well.

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**A Terminal Disclaimer Is Filed Herewith To Obviate The Double Patenting Rejections**

Claims 1-3 and 5-8 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of Application No. 10/104,892. Claims 1-4 presently stand rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of Application No. 10/118,535. A terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) is enclosed herewith to obviate the double patenting rejection. Accordingly, withdrawal of the present double patenting rejections is respectfully requested.

**CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

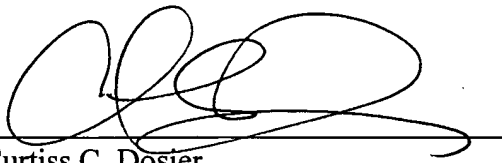
The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney, Curtiss C. Dosier at the number listed below, to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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